

# Exhibit G

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA

4 v.

05 Cr. 621 (KMK)

5 ALBERTO VILAR

Hearing

GARY TANAKA,

6 Defendant.

-----x

7 New York, N.Y.

July 10, 2006

8 9:45 a.m.

9 Before:

10 KENNETH M. KARAS

District Judge

11 MICHAEL J. GARCIA

United States Attorney for the

12 Southern District of New York

One St. Andrew's Plaza

13 New York, N.Y. 10007

DEIRDRE A. McEVOY

14 MARC O. LITT

Assistant United States Attorneys

15 JEFFREY C. HOFFMAN, ESQ.

16 SUSAN C. WOLFE, ESQ.

Attorneys for Defendant Vilar

17 Hoffman & Pollik, LLP

260 Madison Avenue, 22nd Floor

18 New York, New York 10016

(212) 679-2900

19 GLENN C. COLTON, ESQ.

20 Attorney for Defendant Tanaka

Wilson Sonsini Goodrich & Rosati (NYC)

21 12 East 49th Street, 30th Floor

New York, New York 10017

22 (212) 999-5804

23 STEVEN G. KOBRE, ESQ.

Attorney for Defendant Tanaka

24 Kobre & Kim LLP

800 Third Avenue

25 New York, New York 10022

(212) 488-1200

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

other than the statement by the Mayers that they invested in guaranteed fixed rate deposits, which are not part of Amerindo U.S.

THE COURT: But that doesn't mean that her statement that there was PC that they invested in Amerindo U.S. is somehow intentionally false. It doesn't mean that. I understand you have one view of the evidence, but that doesn't by itself mean that that is proof that somehow she has intentionally misrepresented something to the magistrate judge.

MR. HOFFMAN: All right.

THE COURT: Mr. Kobre, did you want to say anything?

MR. KOBRE: No.

(In open court)

BY MR. HOFFMAN:

Q. If you would look at page 3 of the affidavit, paragraph 6A, you state in substance in that paragraph that you were informed by Lisa Mayer that she and her family, in essence, invested in guaranteed fixed rate deposits, correct?

A. That's correct.

Q. You also state that their money was managed in an offshore account with PTC Management Limited in Nassau, correct?

MS. McEVROY: Your Honor, if Mr. Hoffman is going to read from the affidavit, the government would ask that he read it accurately. I think it says to manage much of their Amerindo investment.

1 A. No.

2 Q. Or that involved SBIC investments?

3 A. No.

4 Q. In paragraph number 9 on page 7 you say there is probable  
5 cause to believe that the following records and  
6 instrumentalities of the fraudulent schemed described above and  
7 other evidence related to and evidencing such crimes are  
8 located at the premises.

9 Other than Lily Cates having told you that at some  
10 time between 2002 and 2004, as stated in your affidavit, she  
11 had been at the premises on Park Avenue and had seen  
12 approximately 80 boxes that she said Mr. Vilar told her had  
13 information that would be used in evaluating her investment --  
14 are you with me?

15 A. Yes. I am just making sure that is what is in the  
16 affidavit.

17 Q. Let me ask you this. Do you remember putting that in the  
18 affidavit?

19 A. I was just making sure that what you are saying is  
20 accurately in the affidavit.

21 Q. Go ahead.

22 A. Go ahead.

23 Q. Other than that, and other than your statement that we just  
24 went through on page 7, paragraph 8, that in your training and  
25 experience there are records kept at places of business for

1 substantial periods of time which would evidence, as you put  
2 it, such schemes, other than that background experience you  
3 described and Lily Cates's statement that she was once shown  
4 sometime between 2002 and 2004 80 boxes by Mr. Vilar of the  
5 information which could be used to value her investment, other  
6 than those two things, is there anything else in this affidavit  
7 that supports -- is there anything else -- have you put  
8 anything else in this affidavit concerning what documents you  
9 knew to be at the premises on Park Avenue that would show  
10 evidence of crimes being committed?

11 MS. McEVOY: Objection: Compound and unclear.

12 Q. Do you understand the question?

13 A. No.

14 THE COURT: Why don't you try to break it down. I am  
15 not sure that it was improper, but go ahead, Mr. Hoffman.

16 Q. You state that Lily Cates told you that sometime between  
17 2002 and 2004 Mr. Vilar showed her 80 boxes of materials that  
18 he said contained information that could be used to evaluate  
19 her investment, correct?

20 A. That's correct.

21 Q. You also state that based on your prior experience, you  
22 believe that people involved in what you call such schemes,  
23 referring to what you have described in the affidavit as  
24 illegal schemes, keep records of those schemes at their  
25 businesses, correct?

1 probable cause to believe that any client other than those  
2 already mentioned, as you said a moment ago, had been  
3 victimized?

4 A. That's correct.

5 Q. When you put, third line down in paragraph 8, client files  
6 as documents to appropriately be seized, likewise, as you said  
7 a moment ago, you had no probable cause to believe that any  
8 clients' files would show evidence of victimization of those  
9 clients other than the people you described to us a moment ago:  
10 The Mayers, Ms. Cates, Brian Harvey, Joy Urich, and Paul  
11 Marcus?

12 MS. McEVOY: Your Honor, objection. These questions  
13 were asked and answered on Friday, I believe.

14 MR. HOFFMAN: These were asked and answered on Friday  
15 as to attachment A.

16 THE COURT: I am going to overrule. They may have  
17 been asked and answered on Friday, but overruled.

18 Q. Is that correct?

19 A. Can you repeat the question, please.

20 Q. It is the same question I have asked you about the other  
21 matters. As to the client files, there were no clients whose  
22 files other than the five people we just mentioned -- the  
23 Mayers, the Cateses, Urich, Marcus, and Harvey -- that you had  
24 probable cause to believe had been victimized, correct?

25 A. I did not list them in the affidavit, but had probable

1 cause --

2 Q. But not in the papers, correct?

3 A. Not in the papers, correct.

4 Q. When you called for investment brochures on page 8, the  
5 next category after client files, can you tell us what you  
6 meant by "investment brochures."

7 A. I don't have any brochure describing the type of  
8 investment, a description of the investment, any pamphlet that  
9 describes the nature of the investment, how it is going to be  
10 invested.

11 Q. When you say "the investment," you are talking about any  
12 investments that any of the Amerindo companies offered,  
13 correct?

14 A. That is correct.

15 Q. Did you put any information in the documents that you put  
16 before the magistrate, your affidavit and its attachments, that  
17 would support probable cause to seize documents concerning any  
18 improper investment other than investments in the guaranteed  
19 fixed-rate deposit and investment in the SBIC by Lily Cates and  
20 her \$1 million investment in the other entity that she invested  
21 in?

22 A. That seems unclear. I can't answer that.

23 Q. Because the question is unclear?

24 A. Yes.

25 Q. Let me rephrase the question. In the affidavit you talk

1 investment advisory agreements, and copies of correspondence  
2 sent to or received from clients -- from the beginning of time  
3 until the time that you submitted this affidavit, correct?

4 A. From the beginning of time?

5 Q. From whenever they first came into existence.

6 A. Yes.

7 Q. Whether that was 10 years ago or 20 years ago or 30 years  
8 ago, correct?

9 A. That's correct, yes.

10 Q. Isn't it accurate to say that other than five individuals  
11 we have been mentioning -- maybe I can do it this way so I  
12 don't have to keep repeating it -- the five individuals  
13 mentioned in paragraph E, page 5, that you did not put any  
14 information in the documents you submitted to the magistrate  
15 that would support probable cause to get copies of  
16 correspondence sent to or received from clients other than  
17 those five from whenever those documents originated 10, 20, 30  
18 years ago to the time that you submitted this affidavit,  
19 correct?

20 MS. McEVOY: Your Honor, objection. There aren't five  
21 individuals listed in paragraph E. The government has no  
22 objection to the general question.

23 MR. HOFFMAN: I'm sorry. That's correct.

24 Q. From now on, when I say "the five individuals," I am  
25 referring to Cates, Mayer, Brian Harvey, Joy Urich, and Paul



1 the documents?

2 A. That's correct, no.

3 Q. Correct?

4 A. I did not submit probable cause.

5 Q. You did not submit probable cause to seize these documents,  
6 correct?

7 A. Correct.

8 Q. Let me ask you this. Since I am not prepared to do these  
9 in bulk, have you gone through the documents in the various  
10 boxes that you supplied to the defense that were brought here  
11 in court?

12 A. Yes.

13 Q. Would it be accurate to say that there are a number of  
14 brokerage accounts in addition to the ones I just showed you  
15 whose documents were received which accounts were not named in  
16 paragraph B as in "boy" page 8 and for which there was no  
17 probable cause submitted to the magistrate?

18 A. They were seized, but they were seized under a different  
19 paragraph of the affidavit. I had authority to seize it.

20 Q. I am not asking you whether or not there was a paragraph  
21 that gave you authority to seize a whole bunch of things. That  
22 is not my question.

23 A. OK.

24 Q. My question is, as with the ones I just showed you, that  
25 there are other brokerage accounts that were seized that are

1 information before the magistrate you knew that as to all those  
2 things that were mentioned that you had not put before the  
3 magistrate any probable cause, any information supporting  
4 probable cause to seize them, you knew that at that time as  
5 well, correct?

6 MS. McEVOY: Objection as to ambiguity.

7 THE COURT: It is wordy but not ambiguous.

8 MR. HOFFMAN: That is stereotypical, so I will  
9 rephrase it.

10 THE COURT: You can rephrase it if you want. Go  
11 ahead.

12 Q. Isn't it a fact that at the time you put this material  
13 before the magistrate to get a search warrant, you had the same  
14 basic knowledge you have today in that you knew that you had  
15 not given the magistrate a basis to support probable cause to  
16 seize certain documents that you described yesterday and today  
17 as not having given the magistrate probable cause to seize?

18 MS. McEVOY: Objection, your Honor.

19 THE COURT: Overruled. Do you understand the  
20 question?

21 THE WITNESS: No.

22 Q. I will narrow it down, and then we will hopefully go to  
23 lunch. I asked you about a bunch of various categories of  
24 document that were in the materials you put before the  
25 magistrate where you asked for those categories of documents to

1 be seized. Do you remember those questions?

2 A. Yes.

3 Q. Excluding the five individuals, I asked you if in fact you  
4 had no materials put before the magistrate that would give the  
5 magistrate probable cause to have you seize these various  
6 categories, and question after question you answered by saying  
7 that's correct, exclusive of the five individuals there was no  
8 material put before the magistrate to support probable cause to  
9 seize those documents. Do you remember those questions and  
10 answers?

11 A. Yes.

12 Q. What I am asking you is that information which you just  
13 gave us as to those categories where there was no information  
14 put before the magistrate to support probable cause to seize  
15 those documents, you had the same awareness at the time you put  
16 the information before the magistrate, you knew at that time,  
17 just as you have testified here under oath, that you were not  
18 putting in the documents before the magistrate material to  
19 support probable cause to seize those documents, correct?

20 MS. McEVOY: Objection.

21 THE COURT: Inspector, do you remember giving  
22 testimony about client lists?

23 THE WITNESS: Yes.

24 THE COURT: And that there was probable cause. You  
25 said that there was not probable cause to get all the client

1 Have you looked through it?

2 A. Yes.

3 Q. Would it be accurate to say that there is nothing contained  
4 in defense M as in "mother" M as in "mother" that relates to  
5 the five people we discussed?

6 A. Yes.

7 Q. Would it be accurate to say that that Exhibit M as in  
8 "mother" M as in "mother" falls within the category of those  
9 documents that you requested that the magistrate allow you to  
10 seize for which you knew at the time you made that request that  
11 you were not putting any evidence before the magistrate to  
12 support such probable cause?

13 MS. McEVOY: Objection.

14 THE COURT: Overruled.

15 A. I don't understand the question. Could you repeat it?

16 Q. Let me ask the question again. Does that document MM fall  
17 within the category of documents such as those we discussed  
18 before where there was not any material put before the  
19 magistrate to support probable cause to seize that document?

20 A. This falls along the part of the affidavit that I did not  
21 specifically put this item in, have evidence specifically for  
22 this. But there was probable cause that this was covered  
23 under. What I submitted in my affidavit -- and I think I need  
24 to clarify my answers that I have said before, because I think  
25 there is -- in part of my affidavit I put down those five

1 individuals.

2 Q. Correct.

3 A. Those five individuals were, in the probable cause I  
4 submitted, defrauded by these two individuals. I put in my  
5 affidavit that there is probable cause and reason to believe  
6 that there are other investors, other clients, other victims,  
7 other possible investments that could have also been defrauded  
8 by these individuals.

9 So when you are asking me if I put specific probable  
10 cause on this particular item or investment or Amerindo Tech D,  
11 I think it is a bad assumption. What I have this under is it  
12 is probable cause to believe that there were other particular  
13 items. I had reason and probable cause that I submitted before  
14 the judge that there are investors that invested with Amerindo  
15 and that there are other possible and potential other victims  
16 and investors. I think this is covered under that part of the  
17 affidavit, if I made myself clear.

18 Q. After your testimony this morning, before you took the  
19 stand this afternoon, did you discuss your testimony with  
20 anybody?

21 A. No, I did not.

22 Q. In your affidavit that was put before the magistrate for  
23 the search warrant, you described information concerning Lily  
24 Cates, correct?

25 A. That's correct.

67ASVILAR2 Fraterri go - cross  
1 were never made aware of any phone calls or requests from  
2 Amerindo U.S. to return any of the material that Amerindo U.S.  
3 during the time that Ms. Wolfe made her request and the time  
4 that you went into the boxes and sent the material back to  
5 Amerindo U.S., correct?

6 A. That is correct.

7 Q. And you were aware at the time -- withdrawn.

8 You have been aware pretty much since the time this  
9 case has commenced that the defense in this case has been  
10 requesting the return of irrelevant materials to it, correct?

11 A. That is correct.

12 Q. And there have been numerous conferences where the defense  
13 has actually publicly requested that material be returned to  
14 it, correct?

15 A. That is right.

16 Q. And even as recently as back in March Mr. Colton had  
17 actually asked that material be returned, correct?

18 A. That is correct.

19 Q. And at that time you didn't go through the 12 boxes and  
20 return what you thought to be irrelevant material, did you?

21 A. At that time I don't recall the exact date but I did go  
22 through the inventory sheets of all the boxes and based on what  
23 was on the inventory sheets I pulled out stuff that was not  
24 covered under the search warrant and I did return some  
25 materials.

1 Q. Did you actually go through the boxes?

2 A. No, I actually went through the inventory sheets.

3 Q. And can you explain what it was that compelled you in the  
4 last week to go through the materials that the defense wanted  
5 to use at this hearing and disturb them, if you will, and send  
6 them to Amerindo U.S.?

7 MS. McEVOY: Objection to the characterization of the  
8 testimony. I don't think it was the last week.

9 THE COURT: Whenever it was.

10 MR. KOBRE: Friday.

11 THE COURT: Whenever it was.

12 Go ahead.

13 A. When I reviewed the boxes for the purpose of the hearing,  
14 as I went through the boxes I realized there were some items in  
15 there that were not covered under the warrant.

16 Q. And was there something that you felt that there was  
17 suddenly an urgency that those items needed to be returned and  
18 couldn't wait the 6 days until this hearing that they had to be  
19 sent back immediately?

20 A. I believe there was a discussion that it was just -- we had  
21 no authority to be in possession of that material.

22 Q. So I take it, then, after seeing that material, then you  
23 went back through the 150 other boxes and looked for material  
24 that you didn't have authority to be in possession of as well,  
25 is that right?

67ASVILAR2

Fraterrigo - cross

1 A. I did not.

2 Q. Inspector Fraterrigo, just before we broke you had stated  
3 that the reason why you felt that there was sudden urgency to  
4 return the documents on Friday of last week was because you had  
5 no authority to possess them, is that right?

6 A. Friday two weeks ago, June 28, exactly, that is correct.

7 Q. Just to be clear, the first day of the hearing when it was  
8 supposed to be commenced was on the 7th of July, correct?

9 A. Yes.

10 THE COURT: Hang on. That is the date we adjourned  
11 from the last go-round from May 31-June 1.

12 MR. KOBRE: Right.

13 Q. So on June 28 you sent the material back and approximately  
14 7 days later it was going to be the continuation of the  
15 hearing, correct?

16 A. Yes.

17 Q. Again, just before we broke I had asked you whether or not  
18 believing that you didn't have the authority to possess  
19 irrelevant material you went back at that time to the other 150  
20 boxes to make sure that you weren't in possession of material  
21 that you didn't have authority to possess?

22 A. No, I did not.

23 Q. And at that time realizing that you were in possession of  
24 material that you didn't have authority to possess, did you go  
25 back through the computers and ensure that the government



1 wasn't sitting with material that was not relevant to the  
2 search?

3 A. No.

4 Q. So am I correct that the only evidence that you decided to  
5 return to Amerindo U.S. was from the 12 boxes specifically  
6 requested by the defense to use at the hearing?

7 A. No, that is incorrect.

8 Q. One of the things you knew was you knew that -- withdrawn.

9 You sat in court and observed the questioning and the  
10 testimony of Inspector Feiter, correct?

11 A. Yes.

12 Q. And you were aware that one of the lines of inquiry was  
13 whether or not the warrant was overbroad, correct?

14 A. That is correct.

15 Q. And, therefore, you knew when you went through the boxes  
16 and pulled out what you felt to be irrelevant material that the  
17 material in those 12 boxes might be material that the defense  
18 wanted to use at the hearing, isn't that right?

19 A. I don't know specifically you would want to use it at the  
20 hearing.

21 Q. You thought it was a possibility, correct?

22 A. It could be a possibility, yes, correct.

23 Q. And you returned it on June 28, right?

24 A. That is correct.

25 Q. And you knew that July 4 separated when you returned it to

1 the beginning of the hearing, right?

2 A. I am sorry?

3 Q. In other words, between June 28 and July 7 there was a July  
4 holiday, right?

5 A. Yes.

6 Q. So if the defense actually wanted to acquire the material  
7 and prepare from the material the defense would have to track  
8 down or obtain them from Mr. Licker, correct?

9 A. I guess so. I guess that would be the case.

10 Q. I will ask you to look at the letter before you from Mr.  
11 Litt.

12 A. Yes.

13 Q. Mr. Litt, do you see, didn't provide to the defense, or  
14 even Mr. Licker, an inventory of which items you removed from  
15 the 12 boxes that the defense wanted to use at the hearing,  
16 correct?

17 A. That is correct.

18 Q. Did you create an inventory?

19 A. No, I did not.

20 Q. So you removed the items from the 12 boxes?

21 A. Yes.

22 Q. And just shipped them to Mr. Licker, correct?

23 A. That is correct.

24 Q. Did you make any sort of record of what you actually  
25 removed from the boxes?

1 A. No, I don't believe I did.

2 Q. And do you agree that from the letter that you are looking  
3 at from Mr. Litt that cc's the defense counsel in this case,  
4 you agree with me that from that letter there is actually no  
5 way for the defense to determine which items you removed from  
6 the boxes?

7 A. That is correct.

8 Q. You testified earlier today that one of the things you  
9 removed from the 12 boxes was I think an audio tape, is that  
10 correct?

11 A. That is correct.

12 Q. Do you see how in the letter Mr. Licker indicates that --  
13 withdrawn.

14 Do you see that in the letter, one of the things Mr.  
15 Litt indicates is that he was returning actually documents to  
16 Mr. Licker, correct?

17 A. That is correct.

18 Q. Do you know where that tape is that you removed from the 12  
19 boxes?

20 A. I believe it's contained in the envelopes.

21 Q. That were sent to Mr. Licker?

22 A. Yes.

23 Q. I see.

24 Do you know of either another inventory or another  
25 cover letter that actually addresses items that were returned

1 to Amerindo U.S. that were not documents?

2 A. No, I don't know of any other letter.

3 Q. Just so I understand now, 6 days before the hearing you  
4 remove the items from the boxes?

5 A. Yes.

6 Q. And you sent the items to Amerindo U.S. and at least for  
7 some of them, including the tape, there is actually no record  
8 of the fact that you had actually removed it and sent it to  
9 Amerindo U.S., is that right?

10 A. I didn't make a record, that is right.

11 Q. Isn't it true, Inspector Fraterriigo, that the real reason  
12 why you went through the boxes and you removed items and sent  
13 them to Amerindo U.S. was to impede or make it more difficult  
14 for the defense to ask you questions about the overly broad  
15 material that was in the 12 boxes?

16 A. No, that is incorrect.

17 Q. And it's your testimony that the reason why was you had a  
18 belief at that time -- withdrawn.

19 It's your testimony that you had a sudden concern at  
20 that time that the government had to immediately return  
21 irrelevant material to the defense, is that your testimony?

22 A. As I went through it I think there was a discussion that I  
23 had with the assistants and a determination was made to return  
24 it.

25 Q. So in coming to the decision to remove the items from the

1 boxes of evidence, you had conversations with the lawyers in  
2 this case?

3 A. That is correct.

4 Q. And specifically the two prosecutors here today?

5 A. That is correct.

6 Q. Did you at any time consider whether any sort of  
7 documentation or record should be sent to the defendants so  
8 that they could adequately prepare for this cross examination?

9 A. No.

10 THE COURT: Do you have the letter? I just want to  
11 get the dates straight, Mr. Kobre.

12 Okay, thank you.

13 Q. Inspector, did you at any time tell the lawyers in this  
14 case -- and when I say lawyers I mean the prosecutors in this  
15 case -- what items you were actually removing from the boxes?

16 A. They reviewed what I removed from the boxes.

17 Q. I want to do this briefly and move on to another topic. If  
18 you can take us through or take me through, you obtained the  
19 boxes after receiving Ms. wolfe's letter, correct?

20 A. Yes.

21 Q. You got the boxes and then did you make the decision that  
22 you should go through the boxes and start removing items from  
23 the boxes?

24 A. I went through the boxes, looked through it, and I  
25 discovered there were items in there that were not covered

1 under the warrant and as I pulled them out I showed them to the  
2 assistants and they reviewed it and a decision was made that  
3 they were going to return them.

4 Q. And is it fair to say also that when you reviewed the boxes  
5 and you discovered that there were items in the boxes that were  
6 not responsive, is it fair to say you weren't surprised?

7 A. Excuse me?

8 Q. Is it fair to say you were not surprised by that fact?

9 A. I was surprised.

10 Q. You were surprised. Until you actually looked through  
11 those 122 boxes it was your expectation that all 168 boxes only  
12 contained responsive material? Is that your testimony?

13 A. I assumed they were all responsive material in all the  
14 boxes.

15 Q. That was your assumption, right?

16 A. Yes.

17 Q. There came a time in this case when you petitioned to Judge  
18 Maas for an extension of the warrant for the purposes relating  
19 to returning the server, correct?

20 A. Yes.

21 Q. At the time that you actually approached Judge Maas, you  
22 were aware of the fact that the government had actually issued  
23 a subpoena to cover the material that had been left at Amerindo  
24 U.S., correct?

25 A. Yes.